Anthony Lechmere, Esq;

Sitting Member for the Borough of *Bewdley*.

Salwey Winington, Esq;

PETITIONER.

The CASE.

KING *James* the First by Letters-Patents, dated *Septemb.* 12. in the third Year of his Reign, incorporateth the Inhabitants that then were, or hereafter should be of this Borough, and that the Corporation should be called the Bailiff and Burgesses of *Bewdley*, and appoints a Bailiff and twelve Capital Burgesses for the Government of the said Borough, and other Officers, to whom he gives the sole Power of chusing Burgesses for the Assistance of the Bailiff, and many other Corporate Officers, and giveth Power to the Bailiff and Capital Burgesses to chuse those who should succeed them, and grants Power to send a Burgess to Parliament.

This Charter was pretended to be surrendred by an Instrument under the Common Seal of the Corporation made in the Name of Bailiff, *Recorder*, and Burgesses, and the Surrender accepted and inrolled. *July* 28, 1684.

King *James* II. reciting this pretended Surrender, grants a new Charter, appointing a Bailiff and 14 Capitals, instead of a Bailiff and 12; and amongst other Privileges both Charters, grant that of electing a Burgess to Parliament, but reserves to himself, and his Successors, Power to turn out any Officers of the Town at his and their Will and Pleasure. *May* 4, 1685.

Under this Charter which was on all Hands look'd upon as valid, the Government of the Corporation was peaceably administred from 1685 till *May* 1707, when upon a Trial at *Westminster* before the Lord Chief Justice *Holt*, between one *Slade* and *Walter*, both which pretended to be Bailiffs, the Plaintiff *Slade* chosen by that part of the Burgesses who elected the sitting Member, and the Defendant *Walter* by those who pretend to have chosen the Petitioner, concerning the Right of their respective Elections to be Bailiff, each side during five or six hours Debate, insisted upon the Right of his Election under the Charter of K. *James* II. the Question being who had the Majority, the Defendants being sensible that the Plaintiff had the Majority, waved that Question, and alledged that the Charter was void, and any Election under it void (tho' the Defendants Counsel themselves upon the Trial had produced that Charter) because it was founded upon the pretended Surrender of the former Charter, which was untrue in regard the Corporate Name of *Bewdley* was Bailiff and Burgesses, and the Surrender was made in the Name of Bailiff, *Recorder*, and Burgesses, and so consequently the Surrender void, and the King deceived in his Grant; this Objection prevailed, and the Surrender being afterwards by the Court of *Queen's-Bench*, upon a Nultiel Record pleaded thereto, judicially declared to be void, the subsequent Charter of K. *James* II. reciting that Surrender to be a good Surrender, was also void, and so the former Charter of *James* I. was still subsisting; but the Bailiff and Capital Burgesses under the Old Charter being all dead but one, tho' the Corporation was still subsisting, yet the Powers granted to the Corporation could not be put in Execution, because a competent number of Officers were wanting to execute the same; nor could those Officers be renew'd by any Charter the Corporation had, the Charter requiring a Bailiff, and 6 or 7 Capital Burgesses without a Bailiff at least to execute those Powers.

In these confused Circumstances, the Recorder and major part of the Capital Burgesses under the new Charter, and other Burgesses and Inhabitants, in all about 300, did petition her Majesty for such Charter of Restauration of their ancient Rights, as it is commonly call'd, as her Majesty in her Royal Wisdom should think fit, tho' in truth that which was desired, and what was granted, was only a new Nomination of Officers, as was done by K. *James* I. in the old Charter, and could not be done again but by the Queen for the above Reasons. *Nov.* 20, 1707.

Another Petition was deliver'd to her Majesty to oppose any new Charter, both Petitions were referr'd to the Lord Chancellor, and Lord Chief Justice *Holt*, who, after two solemn Hearings of Council on both sides, after having perus'd the Town-Books, heard several Affidavits read, and examin'd into the number, and value of the *Nov.* 28, 1708

Petitioners on both ſides, both for and againſt ſuch new Charter, reported that they conceiv'd it expedient, a new Charter ſhould be granted; and accordingly her Majeſty was pleas'd to give Directions for a Charter of Reſtauration of the Rights and Privileges of the ſaid Borough granted by K. *James* I. and a new nomination of Officers to the Offices vacant by the Death of the Officers under the old Charter.

March 6, 1707. Notice of her Majeſty's Pleaſure was ſent to both ſides by Letters from the two Secretaries of State, requiring each Party to bring to one of the Secretaries of State a Liſt of 13 Perſons Inhabitants, whom they ſhould think fit to be inſerted in ſuch Charter, to be the firſt Bailiff, and 12 Capital Burgeſſes.

March 16. A Petition againſt granting any ſuch Charter was preſented to her Majeſty, who thereupon appointed to hear the Matter in Council.

March 26. Both ſides were heard accordingly before her Majeſty in Council, there being beſides her Majeſty 27 of the Privy Council preſent; and it was then order'd *Nemine Contradicente*, ſuch new Charter ſhould paſs, as was reported by the Lord Chancellor, and Chief Juſtice.

March 29, 1709. A Letter was ſent from both Secretaries of State to Mr. *Winnington* to acquaint him therewith; and that if he thought fit, he might bring to one of their Offices a Liſt of 13 proper Perſons, to be the firſt Bailiff and Capital Burgeſſes; after ſeveral delays obtain'd by Mr. *Winnington*, on pretence of writing to the Corporation, he at laſt thought not fit to give in any Liſt; whereupon a Liſt being given in by the Petitioners for the Charter, on the 10th of *April* 1708. her Majeſty was pleas'd to grant a Warrant for paſſing a Charter to reſtore and confirm to the Borough their ancient Privileges, Liberties, *&c.* granted by the Charter of K. *James* I. and to inſert therein the Names of the Bailiff, and 12 Capital Burgeſſes inſerted in the Liſt thereto annexed, being the ſame Liſt given in by the Petitioners for the Charter.

Mr. *Winnington* having enter'd Caveats, both at the Solicitor-General, and the Privy-Seal, *April* 14. the Solicitor-General having heard Council on both ſides for above 4 hours thought fit to ſign the Bill. Her Majeſty having ſign'd it the 15th, it was tranſmitted to the Privy-Seal, and on the 20th the Lord Privy-Seal, by the Approbation of Juſtice *Tracy* whom he had call'd to his Aſſiſtance; having heard Council for above 4 hours, paſs'd it, and ſome few Days after it paſs'd the Great Seal; and being publickly read and proclaim'd within the Borough, was joyfully accepted by the Inhabitants.

Michaelmas, *Sep.* 28, 1708. Mr. *Slade*, the ſurviving capital Burgeſs under the Old Charter, being the Bailiff appointed by this laſt Charter, officiated accordingly till the *Thurſday* before *Michaelmas* following; at which time the Bailiff and Burgeſſes (being corporately aſſembled in the *Guildhall*) unanimouſly elected Mr. *James Compſon* to be Bailiff.

Compſon accordingly qualified himſelf, and entered on the Duties of his Office, and although in *Michaelmaſs* Term following, the Court of *Queen's-Bench* granted an Information againſt him in Nature of a *Quo Warranto*, in order to try the Right: At the ſame time they made a Rule, that *Compſon* ſhould continue Bailiff without any interruption till the Information ſhould be tried.

To this Information *Compſon* pleaded and juſtified himſelf under Her Majeſty's Charter, and took Iſſue, that he was duly elected Bailiff: And although this Information was granted about Two Years ago, and this fair Iſſue offer'd by *Compſon*, which muſt have brought the Validity of this Charter in queſtion, yet the Proſecutor never thought fit to bring this Matter to Trial at Law, as he might have done, or ſo much as to join Iſſue thereupon.

Compſon all the remainder of his Time continu'd in quiet Poſſeſſion of the Office, as did alſo his Succeſſor Mr. *Ward*, who was choſen Bailiff *September* 23. 1709. and after him Mr. *Tyndall*, the preſent Bailiff, choſen *September* 28. laſt. No Competitor appearing at either of their Elections, nor any other Perſon pretending to act publickly as Bailiff ſince; though now 'tis given out by the Petitioner, that one *Rock* was privately elected Bailiff for this Year, whoſe pretended Election (if to be look'd into) cou'd not poſſibly be ſupported by any Method of Election hitherto us'd or known to the Corporation under any of the Charters.

Mr. *Tyndall*, the preſent Bailiff, having received the Precept for electing a Member of Parliament, and made the uſual Proclamation at the Time appointed, proceeded to Election of a Burgeſs for Parliament, and no other Candidate appearing, the ſitting Member was elected and return'd.

The Petitioners complain that this laſt Charter was granted Two Days after the Writs of the laſt Parliament were order'd, at the Inſtance of a Noble Lord, (purely to influence and govern the Election) that it erects a diſtinct and ſeparate Body, and transfers their Rights to others: That it was granted againſt the Conſent of the Corporation, and renders the Liberties of other Corporations precarious and dependant on the Will of the Prince, is a violation of Rights and Freedoms, contrary to *Magna Charta*, and of dangerous Conſequence, *&c.*

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When ſo heavy a Charge as this is thrown upon Her Majeſty, Her Privy-Council, and all thoſe Officers concerned in adviſing and paſſing this Charter, it muſt be expected it ſhou'd be made clear and evident beyond contradiction; and had Her Majeſty of Her mere Motion, or at the Inſtance of a Noble Lord, without other Ceremony, granted a Charter purely to ſerve a Turn at an Election, or to erect one Corporation in oppoſition to another, and diſfranchiſe Members, *&c.* there might have been ſome pretence of Complaint: But when the Time taken up in Paſſing it; the ſeveral Stops, Circumſtances, Nature and Neceſſity of it are conſider'd; as no Charter ever paſs'd upon greater Reaſon, ſo perhaps none ever paſs'd with ſo great Sanction and Solemnity.

This appointment was neceſſary for the executing the Precept for the Election of a Member for that Parliament; for there was no other Bailiff, as had been adjudged in the Caſe before, at the Inſtance of thoſe who were for the Petitioners: and therefore the Caſe is no other than where the Bailiff dieth before, or after the Precept iſſued out, and a new Bailiff is choſen.

That it paſs'd ſo near an Election for Parliament, is owing to the artificial Delays of Mr. *Winnington*, who, by Petitions, Caveats, *&c.* had ſpun out five Months in paſſing of it. And as to the particular Intereſt of the ſitting Member, and the influence this Charter may have had upon his Election, it is to be conſider'd, that if the Powers granted to the Corporation could have been executed under the Charter of King *James* I. without this Charter of Her Majeſties co-operating, this New Charter would never have been granted.

That it was granted at the inſtance of a Noble Lord, and againſt the Inclinations of the Inhabitants of the Corporation, muſt appear undeniably falſe, from the Number of Petitioners for the New Charter, who conſider'd at large are 1400; or if reſtrain'd to thoſe Inhabitanrs only that pay to Church and Poor, then the whole Number of thoſe under that diſtinction, as appears by the Books, are 286, of which 210 petition'd for the Charter, and ſome were Neuter.

Nor is the diſproportion leſs in Value than Number; the 210 Petitioners for the Charter are aſſeſs'd to the Poor for Stock 1570 *l.* the other 76, had they all petition'd, are charg'd but at 410 *l.*

If ever any Charter was unexceptionable in the Nature of it, ſure this muſt; it deſtroys no other Charter, it only confirms the Old one; the Words (Reſtore and Confirm) introduce every Clauſe throughout the whole Charter: It grants no New Power or Privilege, or takes away any granted before; it transfers no ones Right to another, nor diſfranchiſes any Member; he that was a Burgeſs before continues ſo ſtill. Of the 12 Capital Burgeſſes under the Old Charter, indeed none but *Slade* was left alive, and therefore the Queen by this Charter fills up the number of Capital Burgeſſes only, and confirms all other Burgeſſes and Officers whatſoever, and conſequently deprives no Man of his Right, as the Petitioners ſet forth: It only appoints Officers, without whom they could not for the future either have a Recorder, Deputy-Recorder, Attornies, Conſtables, Serjeants at Mace, View of Frankpledge, nor future Burgeſſes of either diſtinction. Theſe, and moſt other Corporate Acts and Powers being expreſly placed in the Capital Burgeſſes only. 'Tis likewiſe inſiſted on, that ſeveral of the Petitioners, Burgeſſes under the Old Charter, have aſſerted their Rights by Judgments given for them, upon Informations granted againſt them.

An Information was granted in *Hillary*, 4 *Anne*, againſt Mr. *Foley* and 4 others of the Petitioners Burgeſſes; they juſtified under the Charter of *James* I. 'Twas reply'd, that the Bailiff and Burgeſſes had ſurrender'd the Charter; and they reply'd that there was no Record of any ſuch Surrender: Whereupon the Record of that Surrender being brought into Court, and the Word *Recorder* being join'd with the Bailiff and Burgeſſes, the *Queen's Bench* gave Judgment that it was not the Surrender of the Bailiff and Burgeſſes. *Anſwer.*

This being a Judgment antecedent to the new Charter, 'tis preſum'd, can't prejudice any Right granted by it, and is ſo far from being a Reaſon againſt this Charter, that it was in great meaſure the Occaſion and Foundation of it; for the Inhabitants could not properly apply for this Charter before this Surrender, and the Charter of *James* II. founded thereon, was adjudged to be void.

But then 'tis further inſiſted, that ſince the new Charter granted, one *Smith*, who was choſe Bailiff by the Burgeſſes under the old Charter only, hath obtained Judgment againſt the Queen, upon an Information againſt him for acting as Bailiff; which Judgment hath not been ſet aſide ſince.

To this Information, *Smith* in *Trinity*, 7. pleaded, that he was regularly choſen Bailiff under the Charter of *James* I. and pleaded that Charter with a *preſert in Curia*; the Attorney for the Proſecutor crav'd Oyer of that Charter, which in ſuch Caſe *Smith*'s Attorney ought, by the courſe of the Court, to have given, before the Plaintiff's Attorney was obliged to reply; but *Smith*'s Attorney not having the Char- *Anſwer.*

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ter to produce, without giving Oyer, as he ſhould have done, privately ſign'd Judgment, for want of a Replication: And altho' the Plantiff's Attorney, when he had notice thereof, ſummon'd *Smith*'s Attorney before Judge *Powel*, in order to ſet aſide that Judgment; and in order to try the Right, offer'd to take Iſſue, and try it at the next Aſſizes, which the Judge recommended to *Smith*'s Attorney to agree to, and to write to Mr. *Winington* for that purpoſe, which he accordingly did; yet *Mr. Winington* thought not fit to agree to the trying of it, any more than he hath to try the Information againſt *Compſon* ſince.

This Judgment no doubt might, upon Application to the *Queen's Bench* next *Michaelmas* Term, have been ſet aſide; but *Smith* being out of his Office before *Michaelmas* Term, it was not thought worth while to apply to the Court about it.

The Charter of the Queen recites, The Incorporation by King *James* I. the Surrender of that Charter to King *Charles* II. the ſubſequent Charter of King *James* II. the Invalidity of the Surrender and of the Charter of King *James* II. founded upon that Surrender, the preſent want of Capital Burgeſſes ſufficient to execute the neceſſary Powers of the former Charter, and the many Differences and Doubts occaſion'd thereby; for the compoſing of which, and ſettling Peace and good Government within the Borough, her Majeſty reſtores and confirms to the Burgeſſes and Inhabitants of the ſaid Borough, all Charters, Liberties, *&c.* granted by King *James* I. Then incorporates the Burgeſſes and Inhabitants, by their former Name of Bailiff and Burgeſſes, appoints Mr. *Slade* the ſurviving Capital Burgeſs to be Bailiff, and nominates 12 Capital Burgeſſes; and as to all particular Powers, expreſly refers to the Charter of King *James* I.

And this Charter was drawn by, and according to the Method uſed in reſtoring the Charters of *Plymouth*, *Leverpool*, and all the Charters which were ſurrendered in King *Charles* and King *James* the IId's time, and reſtored in the late Reign, wherein the King made Nominations of the Officers to the Offices void by the Death of the Officers under the Charters ſurrender'd; and therefore if this Charter is void, then are likewiſe the Charters of Reſtoration granted in the laſt Reign void, and the new Charters of King *James* II. are good, and are yet in being.

Bewdley CASE,

To be Heard at the Bar of the *Houſe of Commons*, on *Tueſday*, Dec. 19, 1710.